

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

CALVIN ZASTROW and CORRIE ZASTROW,

Plaintiffs,

v.

CITY OF TOLEDO; GEORGE KRAL, individually and in his official capacity as Chief of Police, City of Toledo Police Department; MICHAEL HAYNES, individually and in his official capacity as a police officer, City of Toledo Police Department; and ANGELA KNOBLAUCH, individually and in her official capacity as a police officer, City of Toledo Police Department,

Defendants.

Case No.

COMPLAINT

[42 U.S.C. § 1983]

Plaintiffs Calvin Zastrow and Corrie Zastrow (collectively referred to as “Plaintiffs”), by and through their undersigned counsel, brings this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

INTRODUCTION

1. This case seeks to protect and vindicate fundamental rights. It is a civil rights action brought under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, challenging the enforcement of several provisions of the Ohio Revised Code and the Toledo Municipal Code (“Code Provisions”) as applied to restrict Plaintiffs’ expressive religious activity.

2. Plaintiffs seek a declaration that Defendants violated their clearly established rights as set forth in this Complaint; a preliminary and permanent injunction enjoining the enforcement

of the Code Provisions as applied to restrict Plaintiffs' expressive religious activity as set forth in this Complaint; and a judgment awarding nominal damages against certain Defendants for the past loss of Plaintiff Corrie Zastrow's constitutional rights. Plaintiffs also seek an award of their reasonable costs of litigation, including attorneys' fees and expenses.

JURISDICTION AND VENUE

3. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

5. Plaintiff Corrie Zastrow's claim for nominal damages is authorized under 42 U.S.C. § 1983 and by the general legal and equitable powers of this Court.

6. Plaintiffs' claim for an award of their reasonable costs of litigation, including attorneys' fees and expenses, is authorized by 42 U.S.C. § 1988, and other applicable law.

7. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

PLAINTIFFS

8. Plaintiffs are adult citizens of the United States. Plaintiff Calvin Zastrow resides in Michigan, and Plaintiff Corrie Zastrow resides in Ohio.

9. Plaintiffs are Christians, and they oppose abortion based on their sincerely held religious belief that abortion is an intrinsic evil. Plaintiffs engage in expressive religious activity on the public sidewalks and other public fora outside of facilities where abortions are committed as part of their religious exercise.

10. As part of their expressive religious activity, Plaintiffs protest abortion by engaging in prayer, preaching, worship, distributing literature, and holding pro-life signs on the public sidewalks surrounding facilities where abortions are committed, including on the public sidewalks and other public areas adjacent to the Capital Care Network abortion center located at 1160 West Sylvania Avenue in Toledo, Ohio (hereinafter referred to as “Capital Care”).

DEFENDANTS

11. Defendant City of Toledo (hereinafter “City”) is a municipal entity organized and existing under the laws of the State of Ohio. It is a municipal corporation with the capacity to sue and be sued.

12. At all relevant times, Defendant George Kral was the Chief of Police for the City Police Department. In that capacity, Defendant Kral is responsible for enforcing the laws of Ohio, including the Code Provisions, he is responsible for the training and supervision of the City police officers, including Defendants Michael Hanes and Angela Knoblauch, and he is responsible for the policies, practices, customs, and procedures of the City Police Department, including the policies, practices, customs, and procedures for enforcing the Code Provisions as set forth in this Complaint.

13. The City, specifically including the City Police Department, and its officials, including Defendant Kral and City police officers, are responsible for enforcing the laws of Ohio, including the Code Provisions.

14. The City’s policy, practice, custom, and procedure of enforcing the Code Provisions to restrict free speech activity, including Plaintiffs’ expressive religious activity, were the moving force behind the constitutional violations set forth in this Complaint.

15. At all relevant times, the City and Defendant Kral trained, supervised, and employed City police officers to enforce the Code Provisions to restrict free speech activity, including Plaintiffs' expressive religious activity, as set forth in this Complaint.

16. The City's and Defendant Kral's deficient training and supervision of City police officers were done with deliberate indifference as to their known or obvious consequences and were a moving force behind the actions that deprived Plaintiffs of their fundamental rights as set forth in this Complaint.

17. At all relevant times, Defendants Haynes and Knoblauch were police officers employed, trained, and supervised by the City and its Chief of Police. At all relevant times, Defendants Haynes and Knoblauch were agents, servants, and/or employees of the City, acting under color of state law.

STATEMENT OF FACTS

18. The City, through its Chief of Police and its police officers, has engaged in a pattern of conduct whereby it has enforced or threatened to enforce various provisions of the Ohio Revised Code, including Menacing (ORC § 2903.22), Obstructing Official Business (ORC § 2921.31), and Disorderly Conduct (ORC § 2917.11), and the Toledo Municipal Code, including Criminal Trespass (§ 541.05), Disorderly Conduct (§ 509.03), and Loitering (§ 509.08), (collectively referred to herein as the "Code Provisions") to restrict the expressive religious activity of Plaintiffs on the public sidewalks and other public areas adjacent to the Capital Care abortion center located within the City.

19. On multiple occasions, Plaintiffs and other pro-life demonstrators went to the public fora adjacent to Capital Care to preach the Word of God and to engage in other expressive activity in order to convince those who visit and work at the Capital Care abortion center and those

who are passing by the abortion center along West Sylvania Avenue and North Haven Road that abortion is an intrinsic evil that results in the murder of an innocent human life and is thus contrary to God's Law. Plaintiffs and the other pro-life demonstrators want to impact the hearts and minds of those who visit and work at Capital Care to inspire them to repent and to stop killing unborn babies through abortion.

20. Plaintiffs are compelled by their sincerely held religious beliefs to engage in their pro-life expressive activity. This expressive activity is a religious exercise for Plaintiffs.

21. Capital Care is located in a commercial district along West Sylvania Avenue in Toledo, Ohio. At this location, West Sylvania Avenue is a busy four lane road (two lanes east bound and two lanes west bound). The vehicle traffic on this road is very loud. Consequently, in order to effectively preach their pro-life message, Plaintiffs and the other pro-lifers must raise their voices to be heard over the traffic and other noise that is customary in a commercial area and that is particular to this area.

22. In or about July 2017, Plaintiff Corrie Zastrow and a pro-life companion were standing on the public sidewalk adjacent to the Capital Care abortion center playing Christian music. Plaintiff Corrie Zastrow was playing a violin, and her companion was playing an acoustic guitar. The music was not as loud as the vehicle traffic, which would drown out the music as it was passing by.

23. Playing Christian music is a form of worship and a religious exercise for Plaintiff Corrie Zastrow.

24. Two City police officers, including Defendant Haynes, arrived, and Defendant Haynes ordered Plaintiff Corrie Zastrow and her companion to stop playing their worship music

at this location on the public sidewalk because, according to the officer, it was too close to the abortion center and thereby disrupting its business.

25. Defendant Haynes told the two pro-lifers that if they did not follow his order, they would be arrested and cited for disorderly conduct. The officer stated that he has the authority to order the pro-lifers to cease their expressive activity on this public sidewalk, claiming that “we do this all the time,” or words to that effect.

26. Rather than face arrest or citation, Plaintiff Corrie Zastrow and her companion ceased their free speech activity and departed.

27. A true and accurate photograph of the City police officers arriving while Plaintiff Corrie Zastrow and her companion were playing their instruments appears below:



28. Later that day, Plaintiff Corrie Zastrow returned to the public sidewalk adjacent to the Capital Care abortion center to preach, hold a pro-life sign, and distribute pro-life literature. She left her violin in her car.

29. Plaintiff Corrie Zastrow was engaging in her expressive religious activity, without any amplification, to convert the hearts and minds of those who are involved with abortion to repent and turn away from this sinful act. True and accurate photographs of Plaintiff Corrie Zastrow preaching, handing out pro-life literature, and holding a pro-life sign appear below:



30. The two City police officers returned and again Defendant Haynes ordered Plaintiff Corrie Zastrow to cease her expressive activity. The officer told her that she would again be cited for disorderly conduct because under this provision of the law she “can’t do anything offensive to the business.”

31. Defendant Haynes also told Plaintiff Corrie Zastrow that she could be arrested for criminal trespass, even though she was on the public sidewalk and never entered the property of the abortion center. When she objected, Defendant Haynes stated, “Trust me, I’ve done this on numerous occasions.”

32. Rather than face arrest or receive a citation, Plaintiff Corrie Zastrow departed the area because she feared being arrested or cited for violating the law for engaging in her expressive religious activity.

33. A true and accurate photograph of Defendant Haynes threatening Plaintiff Corrie Zastrow with arrest and the issuance of a citation appears below:



34. At no time during her expressive activity did Plaintiff Corrie Zastrow engage in any violent act, make any threats, obstruct anyone from entering or leaving the abortion center, enter the premises or property of the abortion center, or obstruct anyone from using the public sidewalk adjacent to the abortion center. At all times relevant, Plaintiff Corrie Zastrow was peacefully engaging in expressive activity protected by the First Amendment.

35. On October 3, 2017, Plaintiff Calvin Zastrow was preaching on the public sidewalk adjacent to the Capital Care abortion center. Plaintiff Calvin Zastrow was preaching with the goal of converting the hearts and minds of those who are involved with abortion to repent and turn away from this sinful act.

36. While preaching, officers from the City Police Department arrived. A true and accurate photograph of Plaintiff Calvin Zastrow reading from his Bible and preaching the Word of God while being observed by City police officers appears below:



37. Plaintiff Calvin Zastrow was confronted by the officers and told that he must stop his expressive religious activity. Initially, he was told that he was in violation of the loitering ordinance. Plaintiff Calvin Zastrow repeatedly asked one of the officers, “What are the consequences if I keep walking on this sidewalk reading the Bible?” or words to that effect. The officer finally responded, “You’re gonna go to jail,” or words to that effect.

38. Plaintiff Calvin Zastrow refused to stop preaching the Word of God, so the officers arrested him, placed him in handcuffs, and transported him to the Lucas County Correction Center.

39. True and accurate photographs of the officers arresting Plaintiff Calvin Zastrow appear below:



40. The City charged Plaintiff Calvin Zastrow with violating three provisions of the Ohio Revised Code: Menacing (ORC § 2903.22), Obstructing Official Business (ORC § 2921.31), and Disorderly Conduct (ORC § 2917.11).

41. At no time prior to his arrest, did Plaintiff Calvin Zastrow enter upon the property of the Capital Care abortion center nor did he impede or block anyone from entering the abortion center. He remained on the public sidewalk. At no time did Plaintiff Calvin Zastrow engage in any violence. He was peaceful at all times. At no time did Plaintiff Calvin Zastrow employ any sound amplification device. He only used his voice and the spoken word. At no time did Plaintiff Calvin Zastrow physically block anyone from using the public sidewalk—the sidewalk is large enough to permit several people to walk on it at one time, as the photographs above demonstrate. And at no time did Plaintiff Calvin Zastrow utter any words that would constitute a “true threat.” He was reading from the Book of Revelation, Chapter 21.

42. According to the City’s police report, Plaintiff Calvin Zastrow was arrested and charged with violating the referenced Code Provisions because he was “yelling and shouting bible scriptures referring to fire and hell,” and this allegedly made an administrator at the abortion center and some patients “feel threatened.”

43. On May 14, 2018, the City agreed in writing to dismiss the criminal charges against Plaintiff Calvin Zastrow in exchange for his written agreement to not sue the City or the arresting officers for damages. The City did not admit any wrongdoing. More specifically, in an addendum to the release and dismissal agreement, the parties agreed that Plaintiff Calvin Zastrow was “releasing any and all claims for money damages arising out of his arrest and prosecution on October 3, 2017, but he is preserving any prospective claims for equitable relief relating to his rights to speech and/or assembly in the public right of way.” Consequently, Plaintiff Calvin Zastrow is only seeking declaratory and injunctive relief in this action.

44. On or about January 6, 2018, Plaintiff Corrie Zastrow and several other pro-life companions returned to the Capital Care abortion center area to hold signs and hand out pro-life

literature on the public sidewalk adjacent to North Haven Road, which is to the east of the abortion center, and on the public sidewalk located at the intersection of North Haven Road and West Sylvania Avenue. A true and accurate photograph of the marked locations where the pro-lifers were engaging in their expressive religious activity appears below.



45. While at these locations, Plaintiff Corrie Zastrow and her companions were holding pro-life signs and handing out pro-life literature. Defendant Angela Knoblauch arrived and told the pro-lifers that they could not stand on the grassy area of the public right of way (the area to the north marked with the arrow in the photograph) and that, regardless, while holding their signs and distributing their literature, they had to keep walking for if they stopped, even momentarily, they would be charged with the crime of loitering.

46. Plaintiff Corrie Zastrow and her companions complied for they feared that if they did not comply, they would be arrested and cited for loitering.

47. Defendant Knoblauch's threat to arrest and cite the pro-lifers for loitering was part of the continuing harassment the pro-lifers receive from the City through its police officers due to the fact that Defendants do not like the pro-lifers protesting at this abortion center.

48. The Toledo Municipal Code section prohibiting loitering states as follows:

509.08. Loitering.

(a) **Definition.** “Loitering” means remaining idle in essentially one location and includes the colloquial expression “hanging around.”

(b) **Certain Types of Loitering Prohibited.** No person shall loiter in a public place and do any of the following:

(1) Breach the peace; or create a disturbance or unreasonable annoyance to the comfort and repose of any person;

(2) Obstruct the free passage of pedestrians or vehicles;

(3) Obstruct, molest or physically interfere with any person;

(4) Engage in conduct which creates an unreasonable risk of physical harm, including making remarks of an offensive, disgusting or insulting nature to another person;

(5) Solicit others for the purpose of engaging in illicit sexual conduct.

(c) **Penalty.** Whoever violates this section is guilty of a misdemeanor of the fourth degree.

(d) **Order and Refusal to Leave.**

(1) Whenever any police officer has reasonable grounds to believe that any person loitering in any public place is likely to cause any of the conditions enumerated in subsection (b) hereof, the police officer may order that person to leave that place in order to preserve the public peace and safety.

(2) Any person who refuses to leave a public place after being ordered to do so by a police officer under subsection (d)(1) hereof, is guilty of a minor misdemeanor.

(emphasis added).

49. Additionally, because City police officers have threatened the pro-lifers with arrest for doing anything “offensive” to the abortion center, Plaintiffs’ expressive religious activity subjects them to arrest and criminal penalties for loitering since the City’s code provision (§ 509.08) prohibits persons from “[e]ngag[ing] in conduct which creates an unreasonable risk of physical harm, including making remarks of an offensive, disgusting or insulting nature to another person.”

50. Section 509.08 of the City’s municipal code is unconstitutional facially and as applied to Plaintiffs’ expressive religious activity.

51. Plaintiffs fear that if they engage in their expressive religious activity as set forth in this Complaint, they will be arrested, cited, and prosecuted for violating the law.

52. The City's pattern of conduct, which includes arresting, citing, prosecuting and threatening to arrest, cite, and prosecute, pro-life demonstrators, including Plaintiffs, for engaging in expressive religious activity on the public fora adjacent to the Capital Care abortion center, has had, and continues to have, a chilling effect on Plaintiffs' expressive religious activity, thereby causing irreparable harm.

FIRST CLAIM FOR RELIEF

(Freedom of Speech—First Amendment)

53. Plaintiffs hereby incorporate by reference all stated paragraphs.

54. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of their right to freedom of speech in violation of the Free Speech Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

55. Defendants' actions, as set forth in this Complaint, injured Plaintiffs in a way likely to chill a person of ordinary firmness from further participation in their expressive religious activity. Plaintiffs' constitutionally protected activity motivated Defendants' adverse actions. Thus, Defendants acted with a retaliatory intent or motive.

56. Defendants targeted Plaintiffs' pro-life activity for disfavored treatment as set forth in this Complaint in violation of the Free Speech Clause of the First Amendment.

57. Defendants' enforcement of the Ohio Revised Code, including Menacing (ORC § 2903.22), Obstructing Official Business (ORC § 2921.31), and Disorderly Conduct (ORC § 2917.11), and the Toledo Municipal Code, including Criminal Trespass (§ 541.05), Disorderly Conduct (§ 509.03) and Loitering (§ 509.08), to restrict the expressive religious activity of

Plaintiffs on the public sidewalks and other public areas adjacent to the Capital Care abortion center located within the City as set forth in this Complaint violates the Free Speech Clause of the First Amendment.

58. Section 509.08 of the Toledo Municipal Code, facially and as applied to Plaintiffs' expressive religious activity as set forth in this Complaint, violates the First Amendment.

59. As a direct and proximate result of Defendants' violation of the Free Speech Clause of the First Amendment, as set forth in this Complaint, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief and entitling Plaintiff Corrie Zastrow to nominal damages.

SECOND CLAIM FOR RELIEF

(Free Exercise of Religion—First Amendment)

60. Plaintiffs hereby incorporate by reference all stated paragraphs.

61. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of their right to religious exercise in violation of the Free Exercise Clause of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

62. Plaintiffs' expressive religious activity as set forth in this Complaint is protected by both the Free Speech and Free Exercise Clauses of the First Amendment.

63. As set forth in this Complaint, Defendants' adverse actions against Plaintiffs and other pro-life demonstrators were designed to intimidate and oppress Plaintiffs' pro-life religious expression in violation of the Free Exercise Clause of the First Amendment.

64. Defendants' enforcement of the Ohio Revised Code, including Menacing (ORC § 2903.22), Obstructing Official Business (ORC § 2921.31), and Disorderly Conduct (ORC § 2917.11), and the Toledo Municipal Code, including Criminal Trespass (§ 541.05), Disorderly Conduct (§ 509.03) and Loitering (§ 509.08), to restrict the expressive religious activity of Plaintiffs on the public sidewalks and other public areas adjacent to the Capital Care abortion center located within the City as set forth in this Complaint violates the Free Exercise Clause of the First Amendment.

65. As a direct and proximate result of Defendants' violation of the Free Exercise Clause of the First Amendment, as set forth in this Complaint, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief and entitling Plaintiff Corrie Zastrow to nominal damages.

THIRD CLAIM FOR RELIEF

(Equal Protection—Fourteenth Amendment)

66. Plaintiffs hereby incorporate by reference all stated paragraphs.

67. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiffs of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

68. Defendants' enforcement of the Ohio Revised Code, including Menacing (ORC § 2903.22), Obstructing Official Business (ORC § 2921.31), and Disorderly Conduct (ORC § 2917.11), and the Toledo Municipal Code, including Criminal Trespass (§ 541.05), Disorderly Conduct (§ 509.03) and Loitering (§ 509.08), to restrict the expressive religious activity of Plaintiffs on the public sidewalks and other public areas adjacent to the Capital Care abortion

center located within the City as set forth in this Complaint violates the Equal Protection Clause of the Fourteenth Amendment.

69. By denying Plaintiffs and other pro-life demonstrators access to public fora to engage in their expressive religious activities, as set forth in this Complaint, Defendants have deprived Plaintiffs of the equal protection of the law.

70. As a direct and proximate result of Defendants' violation of the equal protection guarantee of the Fourteenth Amendment, as set forth in this Complaint, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief and entitling Plaintiff Corrie Zastrow to nominal damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A) to declare that Defendants violated Plaintiffs' fundamental constitutional rights as set forth in this Complaint;

B) to enjoin Defendants' enforcement of the Ohio Revised Code, including Menacing (ORC § 2903.22), Obstructing Official Business (ORC § 2921.31), and Disorderly Conduct (ORC § 2917.11), and the Toledo Municipal Code, including Criminal Trespass (§ 541.05), Disorderly Conduct (§ 509.03) and Loitering (§ 509.08), to restrict the expressive religious activity of Plaintiffs on the public sidewalks and other public areas adjacent to the Capital Care abortion center located within the City as set forth in this Complaint

C) to declare Toledo Municipal Code § 509.08 unconstitutional facially and as applied to restrict Plaintiffs' expressive religious activity set forth in this Complaint;

D) to permanently enjoin Toledo Municipal Code § 509.08 and its application to Plaintiffs' expressive religious activity as set forth in this Complaint;

E) to award Plaintiff Corrie Zastrow nominal damages for the past loss of her constitutional rights;

F) to award Plaintiffs their reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;

G) to grant such other and further relief as this court should find just and proper.

Respectfully submitted,

/s/ Thomas W. Condit

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*Subject to admission *pro hac vice*

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